



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/152598

PRELIMINARY RECITALS

Pursuant to a petition filed October 03, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability, now known as the Office of the Inspector General (OIG), in regard to Medical Assistance (MA), a telephonic hearing was held on November 07, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the OIG correctly denied the petitioner's prior authorization (PA) request for personal care worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By written submittal of: Robert Derendinger
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County. She is 46 years old and certified for MA.

2. Petitioner is diagnosed with diabetes with neuropathy, retinopathy, anxiety, depression, hypertension, sleep apnea and leg weakness.
3. On May 27, 2013, Loving Hearts HomeCare requested prior authorization from the OIG on petitioner's behalf for 22 hours/88 units per week of PCW services (PA # [REDACTED]) to begin May 10, 2013. The OIG returned the PA to Loving Hearts HomeCare several times requesting that errors be corrected and additional information be submitted to support the PA request.
4. On September 17, 2013 the OIG denied the PA request because the information provided from Loving Hearts HomeCare did not support the medical necessity of the requested services.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The OIG denied the PA after returning the PA to Loving Hearts HomeCare several times requesting that errors be corrected and additional information be submitted to support the PA request. The explanation

for the denial was set forth in its summary statement (dated October 21, 2013) prepared for the instant hearing. See Exhibit 1. At hearing, petitioner explained her limitations and need for PCW services. Her limitations relate mostly to her diabetic neuropathy which causes her numbness and pain, blurred vision, and tremors/shaking when her blood pressure or glucose levels are too high or too low. I do not dispute her credibility as to these limitations. The problem with petitioner's case stems from the Screening Tool as filled out by the provider and its supporting documents, or lack thereof. When prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6 (emphasis added). There is no question that the rules require doctor's orders to verify that the PCW services are so authorized. See Wis. Adm. Code §§DHS 107.112(1)(a), 105.17(2)(b)2, and 107.02(2m)(a)19. Without the proper orders, the MA program cannot authorize hours for those cares. The OIG commented that the physician's order that was provided would support a maximum of 3 hours per week for assistance with bathing and that it would approve those hours if the provider, Loving Hearts HomeCare, submitted a new PA. At hearing petitioner believed the provider had, or was going to do just that. However, it appears that the petitioner needs more time than 3 hours weekly for other personal cares – how much more is unclear and the provider has not justified it. Additionally, the provider did not even mention the petitioner's sleep apnea and her use of CPAP machine nightly. Petitioner is essentially at the mercy of the provider who is required to justify the requested services and should know how to navigate the complexities involved with a PA request like we have here.

In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that all of the requested PCW services were medically necessary, and technically I am reviewing the OIG's determination. I suggest that the petitioner, her provider(s), and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for PCW time. They may also want to look at PRN time given petitioner's stated functional variations which depend on her blood pressure and glucose levels.

I therefore must conclude that the OIG was correct in its denial of the PA. As in all prior authorization request cases, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. As stated above, Loving Hearts HomeCare may be able to file another prior authorization request correcting the problems and explaining more fully the need for the hours. An estimated time schedule could help in showing the OIG the hours needed, what specific ADLs require assistance and what specific assistance is provided, what limitations petitioner experiences that require assistance, and the time involved for each task. This is not intended to diminish the challenges petitioner and her family face, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly denied the petitioner's PA request for PCW hours.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

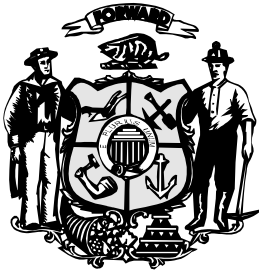
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of December, 2013

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 5, 2013.

Division of Health Care Access And Accountability